

EXHIBIT D

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION
GRAND JURY

IN RE:

GRAND JURY INVESTIGATION

CRC 03-0233

* * * * *

BE IT KNOWN that on Friday, August 19, 2005,
the testimony of KATHYE HOWARD was taken before the
Grand Jury of the United States District Court for the
Middle District of Alabama, Northern Division, in the
Grand Jury Room, United States Courthouse, One Church
Street, Montgomery, Alabama; J. B. PERRINE
interrogating.

* * * * *

KATHYE HOWARD

The witness, having first been sworn to speak the truth, the whole truth and nothing but the truth, testified as follows:

EXAMINATION

BY MR. PERRINE:

Q. Good afternoon, ma'am. Could you please state your name and spell your first and last name for the court reporter?

A. My name is Kathye Howard. My first name is K-A-T-H-Y-E, H-O-W-A-R-D.

Q. Ms. Howard, how are you employed?

A. I'm employed by Waste Management, Emelle, Alabama.

Q. And what position do you have there?

A. I'm the billing clerk, or one of the billing clerks.

Q. And as a billing clerk, what are your responsibilities?

A. In general, one of billing the waste as it comes in and then various other duties that go along with that, generating reports and those type of things. Billing is my main function, though.

Q. Now, when you say billing the waste, is there -- the waste at Emelle, is it a unique type of

1 waste that gets dumped there?

2 A. Well, I would say it probably is, yes.

3 Q. What type of waste is it?

4 A. Well, it's hazardous waste. Most of it is
5 hazardous waste.

6 Q. Now, the billing, does all the waste get
7 billed the same way?

8 A. No, it doesn't.

9 Q. Tell the members of the grand jury about the
10 different types of waste there and the fees associated
11 with those different types of waste.

12 A. Okay. Well, there -- there are different
13 types of waste that come in; and those wastes, of
14 course, are -- they're billed according to the
15 treatment standards that it takes to be able to make
16 them where we can landfill them. And along with that,
17 we bill the tax, the taxes that we are required to
18 bill on those.

19 And the taxes are based on the EPA codes that
20 accompany that waste. Some are considered hazardous
21 codes by EPA; some are nonhazardous. And then there
22 are two other areas which are called P waste and U
23 waste that carry yet a different rate of taxing. And
24 we -- we bill the taxes based on those codes, those --

25 Q. And to whom does Waste Management have to pay

1 the tax to for the waste that's dumped at Emelle?

2 A. The Alabama Department of Revenue.

3 Q. All right. Are you having responsibilities
4 for preparing the tax return or the tax reports from
5 Waste Management to the Department of Revenue for the
6 waste that's dumped at Emelle?

7 A. I do.

8 Q. And what exactly do you do for that function?

9 A. Reports are generated off of our billing
10 system that designate how many tons go for each
11 particular rate. And I just transfer that information
12 onto the form that the Alabama Department of Revenue
13 says that we have to use.

14 Q. Okay.

15 A. And -- and I submit it.

16 Q. Yeah. I want to show you -- did you bring
17 some records with you today?

18 A. I did.

19 Q. Okay. I'm going to show you -- I'll do it
20 this way. I want to show you what we'll mark as --
21 I've got one more here. We'll call that Grand Jury
22 Exhibit #133. And if you can take -- you can take
23 your time and look at that stack of documents. Do you
24 recognize what's been marked as Grand Jury Exhibit
25 #133?

1 A. I do.

2 Q. All right. And just take your time. And I
3 think the first page of the stack is July 2005. And
4 it should be in chronological order, I think, going
5 backwards in time. And just take your time, and you
6 can just flip through and see how many calendar years
7 there are in the stack.

8 A. (Witness complies) Do you want me to look at
9 each one?

10 Q. You don't have to. Just turn to the last
11 one, the very last one.

12 A. Okay.

13 Q. And what's the date of the last one?

14 A. September of 1997.

15 Q. Okay. And the first one, I believe, was July
16 of 2005?

17 A. It is.

18 Q. All right. Those -- Grand Jury Exhibit #133
19 is a stack of documents. And every one is the same
20 thing. Do you recognize what type of document it is?

21 A. It is. It's the report.

22 Q. The report for what?

23 A. The hazardous waste report that I turn in to
24 the State every month.

25 Q. For the taxes on the waste dumped at Emelle?

1 A. Correct.

2 Q. And do you prepare those reports?

3 A. I do.

4 Q. Have you prepared every report in that stack
5 in front of you?

6 A. I have up until -- I'll have to go back and
7 see the date.

8 Q. Okay.

9 A. September of 1998.

10 Q. Okay.

11 A. And then prior to that was someone else.

12 Q. All right. From September of 1998 until July
13 2005, you prepared each one of the reports in front of
14 you?

15 A. Yes.

16 Q. And the information that you put on those
17 reports, where did you get that information?

18 A. From billing reports that are generated off
19 of our computer generating system.

20 Q. Now, did you sign each one of those reports
21 from that time period?

22 A. I did.

23 Q. And then was it notarized?

24 A. It is.

25 Q. Okay. Now, after you prepare the report,

1 what -- what do you do with them?

2 A. I fax a copy to the Alabama Department of
3 Revenue, to the attention now of Felicia Thomas, and
4 have been for several -- probably the last couple of
5 years. I'd have to look back to see. And then I mail
6 this copy, the original, to the State of Alabama
7 Department of Revenue.

8 Q. All right. And if I show you -- do you know
9 the address that you mail the report to?

10 A. Yes.

11 Q. And what is that address?

12 A. The address is the Alabama Department of
13 Revenue, Electronic Funds Transfer Unit, P.O. Box
14 327950, Montgomery, Alabama, 36132-7950.

15 Q. All right. And how often do you make these
16 reports?

17 A. Once a month.

18 Q. And is -- every month from September of 1998
19 until the present, have you mailed a copy of that
20 report to that address in Montgomery, Alabama?

21 A. Yes, I have.

22 MR. FEAGA: J. B., is it '98 or '97? When
23 does it start?

24 MR. PERRINE: She --

25 Q. You started preparing the reports in

1 September of 1998; is that right?

2 A. I believe that was the last one.

3 MR. FEAGA: But it goes through September
4 1997.

5 GRAND JUROR: But they go through --

6 Q. The stack goes through, I think, September
7 '97?

8 A. Right.

9 MR. FEAGA: Okay. Thank you. I just got
10 confused. Appreciate it.

11 Q. And do you mail them through the United
12 States Mail?

13 A. I do.

14 Q. And are you the one that actually folds up
15 the report into an envelope and mails the envelope?

16 A. Yes, I do.

17 Q. And what do you do with that envelope?

18 A. We have a central mailbox that all of our
19 mail goes to in the office, and then the mail clerk
20 takes that mail and stamps it, and it's picked up and
21 taken to the post office.

22 Q. And is that the same way you do all your
23 correspondence that you're mailing based on your job?

24 A. Yes, everything.

25 Q. And you do that once a month?

1 A. Yes, I do.

2 Q. I believe there's a spot on that report that
3 talks about electronic funds transfer?

4 A. Uh-huh.

5 Q. Can you explain to the members of the grand
6 jury what the electronic funds transfer is?

7 A. It's an automated service where you call an
8 800 number and the -- you walk through a series of
9 steps and give them the information, and your funds
10 are automatically transferred from your bank to the
11 State of Alabama.

12 Q. So in this case -- and do you do that process
13 for Waste Management for the taxes to be paid to the
14 State of Alabama from Waste Management?

15 A. I do.

16 Q. All right. So what do you -- can you tell
17 the members of the grand jury what you physically do
18 to make that process work, to transfer funds from
19 Waste Management to the Alabama Department of Revenue
20 to pay this tax?

21 A. Well, I -- as I said, I call the number
22 that's on the form. I have a form, and I keep that
23 form also, because I write the confirmation number
24 that they give me when the transaction is complete.
25 And I keep that, and it goes into my files, also. And

1 I call the number. They ask for your tax ID number.
2 They ask for the taxing period. They ask for your --
3 the settlement date, which is the next working day
4 after I do the transfer, which is when it will hit
5 your bank, and the actual amount, the dollar amount.
6 That's pretty much it. And then they give you a
7 transaction number to show that the transaction is
8 complete. And then we get verification that it was
9 transferred from our bank.

10 Q. The funds for Waste Management, where do they
11 come from to pay this tax?

12 A. They come from our bank in Dallas, Texas,
13 which is the corporate lock -- I mean corporate bank.

14 Q. So whenever you actually effectuate this
15 transfer of money, it is moving money from Dallas,
16 Texas, in this Bank of America account; and it's
17 moving it from Dallas, Texas, to the State of Alabama,
18 wherever the Department of Revenue has its account; is
19 that correct?

20 A. Right. Right.

21 Q. Okay. And do you do that -- how often do you
22 do that electronic fund transfer?

23 A. Once a month.

24 Q. And is there a correlation between you doing
25 the fund transfer with your filling out that form in

1 front of you?

2 A. Yes. I do them the same day, the same day.

3 Q. So is it fair to say your standard procedure
4 is to complete the form, do the fund transfer, and
5 then put the form in the mail to the Department of
6 Revenue; and you've also faxed a copy of the form to
7 the Department of Revenue?

8 A. Right.

9 Q. And you do that every month?

10 A. Every month.

11 Q. And you've been doing that every month since
12 September of 1998 to the present?

13 A. Correct. Correct.

14 Q. All right. If you wouldn't mind, could you
15 look on the -- I think you said you began doing this
16 in September of 1998. Could you look at August of
17 1998 and see if you see a name of a person who had
18 been performing this function before you?

19 A. I did August. Excuse me. That was October.
20 Excuse me. John Calhoun.

21 Q. Do you know John Calhoun?

22 A. I do.

23 Q. Does he still work for Waste Management?

24 A. No. He's retired.

25 Q. Okay. Do you know what position he held at

1 Waste Management?

2 A. He was billing supervisor.

3 EXAMINATION

4 BY MR. FEAGA:

5 Q. Kathye, would you do us a favor and would you
6 take a look at the amount of the bill that -- or
7 that's not -- let me correct -- the amount that is
8 reflected as having been remitted to the State by
9 Waste Management in your billing statement for the
10 month of January 1999? Is there a total amount listed
11 that you would have electronically fund transferred?

12 A. It is.

13 Q. Okay. How much did you transfer to the State
14 in January of '99? And hold your spot there if you
15 would. I'm going to get you to go down through a
16 couple of months.

17 A. January of 1999?

18 Q. Uh-huh.

19 A. \$240,556.23.

20 Q. Okay. I'm going to ask you, if you would,
21 just round them to the nearest 10, okay, 10s of
22 thousands if you would. Can you do that?

23 A. Uh-huh.

24 Q. How much would it be for January of '99?

25 A. 241,000.

1 Q. Okay. How about February?

2 A. 228,000.

3 Q. How about March?

4 A. 286,000.

5 Q. April?

6 A. 253,000.

7 Q. May?

8 A. 260 -- 261,000.

9 Q. June?

10 A. 249,000.

11 Q. July?

12 A. 171,000.

13 Q. You've got a big drop in July. When did
14 that -- when did that transfer and when did that --
15 what's the date on that billing?

16 A. The date on -- for the one in -- that I did
17 for July?

18 Q. Right.

19 A. I'm not sure what you're asking me.

20 Q. When did you submit it?

21 A. When did I submit it?

22 Q. Right.

23 A. August the 19th.

24 Q. So it went in in August?

25 A. Right. You --

1 Q. All right. And what about the bill for
2 August? How much was that one for, the next month?

3 A. 405,000.

4 Q. 405,000 in August. What about September?

5 A. 422,000.

6 Q. Okay. What about October?

7 A. 124,000.

8 Q. Okay. What about November?

9 A. 285,000.

10 Q. And December?

11 A. 263,000.

12 Q. Okay. Can we go through one more year if you
13 would? If you will start in January now of 2000.

14 A. 181,000. 409,000. 341,000. 201,000.
15 454,000. 236,000. 189,000. 228,000. 192,000.
16 186,000. 203,000. 332,000.

17 Q. Okay. Do you know from your position as a
18 billing clerk, did anything happen -- go back to the
19 July and August bills for '99.

20 A. Okay.

21 Q. Now, those bills are going to be amounts that
22 you are calculating that are payable to the State, are
23 they're based on the tax per ton of material dumped at
24 the site; is that right?

25 A. Correct.

1 Q. And you have different tariffs for different
2 types of material, I think you said.

3 A. Right. Right.

4 Q. So do you know whether or not anything
5 happened in -- in July-August time frame of 1999, or
6 do you recall, that changed the amount or the way that
7 you were -- you were doing your calculations? Are you
8 familiar with anything having changed in the way the
9 Revenue Department was taxing waste dumped at Emelle?

10 A. No. The only thing I'm aware of -- and I'm
11 not sure what the time line was -- was there were some
12 changes. Let's see. I think --

13 Q. Let me ask you this --

14 A. -- given some --

15 Q. Take a look at those same bills. Go back to
16 July of 1999. Do you bill for a particular type of
17 waste at roughly \$41 dollars a ton?

18 A. We do, uh-huh.

19 Q. Okay. And is there a category of waste that
20 you bill at \$11 a ton, roughly?

21 A. We do.

22 Q. What is the exact amount of those? I said 41
23 and 11?

24 A. It's 41.60 and 11.90 -- 11.60. Excuse me.

25 Q. What is it you're billing at 41.60 for?

1 A. It is waste that is considered hazardous by
2 EPA standard, EPA codes. And the State of Alabama has
3 said that these particular codes have to be billed at
4 that rate.

5 Q. Okay. And what about -- the State says
6 that? Is that what you're saying? They have to be
7 billed at that rate?

8 A. Yes.

9 Q. Okay. And the -- the \$11 one, what is that?

10 A. Those are other type codes that we can bill
11 at that rate.

12 Q. Okay. Are they not consider -- they're not
13 hazardous waste, then? Is that what your
14 understanding is?

15 A. I guess not. They are the codes that we've
16 been told we can bill that particular rate at.

17 Q. Okay. In July of '99 -- let's go back to
18 June, June of '99. Can you go to June? How many tons
19 of waste did you bill the State for at \$41 a ton in
20 June of '99?

21 A. 5,369.

22 Q. Okay. And -- and how many did you bill at 11
23 that month, \$11 a ton? How many tons? Just give me
24 the round figure, five thousand whatever. You don't
25 have to go all the way down to one digit.

1 A. About 7,500.

2 Q. Okay. Now, could you go to July? How much
3 at 11 -- 41 versus 11 that month?

4 A. 3300 tons at the 41.60 and 50 -- excuse me.
5 I'm sorry. I'm sorry. I was looking at a total
6 there.

7 Q. Okay. I thought maybe that figure was too
8 high.

9 A. I'm sorry. I was looking at a total.

10 Q. Going back to June now?

11 A. I'm going to go back to June.

12 Q. At 41?

13 A. At 41.60, it was 5,000 -- 5300. At the
14 11.60, it was a 1,071.

15 Q. Okay. Wait a minute. You said 5,000; 5300,
16 at 41?

17 A. At the 41.60, it was 5,300.

18 Q. Oh, 5,300. Okay.

19 A. I'm sorry.

20 Q. 5300 tons. Okay. And then at the 11, it was
21 how much?

22 A. 1,071.

23 Q. 1,071? Now go to July.

24 A. In July, at the 41.60 cents a ton, it was
25 3300 tons.

1 Q. So you had a drop in July in that tonnage.

2 Okay. And what happened over on the other side?

3 A. You mean on the 11.60?

4 Q. On the 11, yeah.

5 A. 1946 tons.

6 Q. So it went up some?

7 A. It did.

8 Q. Okay. Go to August.

9 A. Okay.

10 Q. At 41?

11 A. It's 8300 tons.

12 Q. 8300. And what about at --

13 A. I'm sorry. I don't have my glasses.

14 Q. I don't know if these would help or not. Do
15 they? I didn't bring mine either. I had to borrow
16 those.

17 A. Yes, this works fine. 2700 tons at the
18 11.60.

19 Q. So that went up again that month for the 11.
20 And what about in September?

21 A. The 41.60, it was 8200 tons. And at the
22 11.60, it was about 3700 tons.

23 Q. Okay. So you got more coming in at the 11.60
24 and more coming in at 41.

25 Okay. I just kind of wanted to see what the

1 A. We can't change the codes.

2 Q. I know; but by treating it, can you remove
3 some of the hazardous material from it or separate it
4 into different types of material?

5 A. That would not be something that I could
6 answer.

7 Q. You don't really know how that's done?

8 A. I don't really know that. That would be --

9 Q. Okay. But the company would maintain records
10 of that sort of thing?

11 A. Yes, sir.

12 Q. So if we wanted to go back and find out what,
13 if any, impact treatment of waste on the site on the
14 amount of tax that Waste Management was giving to the
15 State, we could go back and check that?

16 A. You should be able to, yes, sir.

17 Q. All right.

18 MR. FEAGA: J. B., did you have any other
19 questions for her?

20 MR. PERRINE: Just a couple of questions.

21 EXAMINATION

22 BY MR. PERRINE:

23 Q. Is there a particular time of month that you
24 send in these reports?

25 A. They have to be to the State before a certain

1 bills reflected on a month-to-month basis. If we
2 wanted to see over the course of a year whether there
3 was a change in the tonnage from one year to the next
4 that was being dumped at -- at 41 versus 11, we could
5 go through those statements and add them up and we
6 could get a calculation and see how many tons were
7 dumped of each type of waste and total for the whole
8 year?

9 A. True. True.

10 Q. Okay. And we could do it, then we could
11 compare those figures year to year and see whether it
12 went up or down and that sort of thing?

13 A. Uh-huh.

14 Q. If we wanted to see whether or not there was
15 waste that was being brought on the site and treated
16 on the site, does the company maintain records to show
17 if a truck arrives and it's got a particular
18 designation as it goes through the gate of the type of
19 waste that's on it? Does the company maintain a
20 record of what that is and how many tons it is?

21 A. Uh-huh.

22 Q. Then if it gets on the site, do you actually
23 then -- on the site, is there -- is there a process
24 whereby the company can treat that waste on site and
25 change its character?

1 date, which is near the end of the month. It's their
2 last working day, I think the day before their last
3 working day in any given month. But I usually do it
4 the middle of the month because I -- I don't want to
5 forget it. They will fine you if you don't, and I
6 don't want to forget it.

7 Q. If the report gets to the Department of
8 Revenue late, then Waste Management can be subject to
9 a fine?

10 A. Yes.

11 Q. All right. And I may have asked you this
12 already, but how long have you worked for Waste
13 Management at Emelle?

14 A. 1987.

15 Q. And how long have you been in a position as a
16 billing clerk?

17 A. 1987.

18 MR. PERRINE: All right.

19 MR. FEAGA: Anybody else have any questions?

20 Thank you for coming, ma'am.

21 * * * * *

22 END OF PROCEEDINGS

23 * * * * *

24

25

REPORTER'S CERTIFICATE

STATE OF ALABAMA

ELMORE COUNTY

I, Dee Coker, Registered Professional Reporter and Commissioner for the State of Alabama at Large, hereby certify that on Friday, August 19, 2005, I reported the GRAND JURY PROCEEDINGS in the matter of the foregoing cause, and that pages 2 through 21 contain a true and accurate transcription of the said proceedings.

I further certify that I am neither kin nor counsel to any of the parties to said cause, nor in any manner interested in the results thereof.

This 19th day of September, 2005.

DEE COKER, CSR, RPR
Commissioner for the State
Of Alabama at Large

MY COMMISSION EXPIRES: 1/25/09

DUNN, KING & ASSOCIATES
Montgomery, Alabama
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